

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
Northern Division**

JOHNNY KUYKENDALL

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Plaintiff

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v.

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Case No.: 1:17-cv-03098-RDB

STATE OF MARYLAND, et al.

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Defendants

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DEFENDANT WEXFORD HEALTH SOURCES, INC.’S
MOTION FOR SUMMARY JUDGMENT

Defendant Wexford Health Sources, Inc. (“Wexford”), by and through its attorneys, Joseph B. Chazen, Gina M. Smith, Samuel T. Wolf, and Meyers, Rodbell & Rosenbaum, P.A., files this Motion for Summary Judgment and states:

1. Johnny Kuykendall died on February 23, 2016. The complaint initiating this action was not filed on his behalf until February 1, 2017, more than 11 months after Kuykendall’s death. As such, the complaint is a nullity as Kuykendall could not file it and his attorney could not file it on his behalf.

2. Because the complaint is a nullity, a personal representative—if one exists—cannot be substituted as a party plaintiff and cannot ratify the complaint, because there is nothing to ratify.

3. If a personal representative of Kuykendall’s estate were to attempt to file a new complaint, that complaint would be barred by the three-year statute of limitations. It is indisputable that Kuykendall knew of his alleged medical injury no later than February 20, 2014, which is more than three years ago.

4. Wexford adopts by reference its memorandum in support of this motion.

5. The material facts cannot be disputed. Wexford is entitled to judgment as a matter of law.

WHEREFORE, Defendant Wexford Health Sources, Inc. requests that the Court enter judgment in Wexford Health Sources, Inc.'s favor.

Respectfully submitted,

MEYERS, RODBELL & ROSENBAUM, P.A.

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CERTIFICATE OF SERVICE

I certify that on this 26th day of October 2017, this motion, the supporting memorandum, and a proposed order were filed and served on counsel for all parties using the Court's ECF system.

/s/ Samuel T. Wolf

Samuel T. Wolf